

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JIT HASSIN ABD ALWAKHAD)
A.K.A. HUSSAIN A GHEITH,)
)
Plaintiff,)
v.)
)
MAHMUD AWAD AMIN)
A.K.A Mahmoud A. Mahmoud)
and)
SUSAN AWAD ALFARAS,)
A.K.A. SUSAN F. AL-NASER)
)
Defendants.)

Judgement No. **04J-06-107**

Docket # L-21-479

Date Submitted: March 10, 2005
Date Decided: September 14, 2005

OPINION

Upon Defendant Susan Awad Alfaras' Motion to Vacate Foreign Judgment - GRANTED

Appearances:

John L. Williams, Esquire, The Williams Law Firm, P.A., 1201 Orange Street, Wilmington, Delaware 19801, for the Plaintiff.

Thomas B. Ferry, Esquire, Thomas B. Ferry, P.A., 299 East Main Street, Newark, Delaware 19711, for the Defendant Susan Awad Alfaras, a.k.a. Susan F. Al-Naser.

JURDEN, J.

This matter is presently before the Court on Defendant Susan Awad Alfaras' Motion to Vacate Foreign Judgment. For the reasons set forth below, the motion is **GRANTED**.

I. FACTS

Mahmud Awad Amin a.k.a. Mahmoud A. Mahmoud (hereinafter referred to as the "Husband") and Susan Awad Alfaras a.k.a. Susan F. Al-Naser (hereinafter referred to as the "Wife") were married on July 20, 1985.

On August 1, 1996, the Husband entered into a promissory Note (hereinafter the "Note") with Jit Hassin ABD Alwakhad a.k.a. Hussain A. Gheith (hereinafter referred to as the "Plaintiff") in the amount of \$130,000.00. Only the Husband's signature appears on the Note, although the Note bears an identification number of 94715683 which, according to the Husband, is the identification number of the Husband and the Wife, as a married couple. The stated purpose of the Note was to facilitate a move to the United States and, according to the Husband, the Wife and Husband used the proceeds from the Note to finance their relocation to the United States. The Husband claims that he carried the \$130,000 in cash in a bag when he traveled with his family to the United States on August 7, 1996. The Wife claims she was unaware that the Husband executed the Note, and would not have agreed to it had the Husband discussed it with her. According to the Wife, she and the Husband had approximately \$85,000 in savings in Saudi Arabia (where they had both worked for several years), which they transferred to the United States in increments using travelers checks. Further according to the Wife, it was this money that supported their family when they first relocated to the United States.

On December 9, 2003, the Plaintiff filed suit in Jerusalem against both the Husband and the Wife based on the Note. Plaintiff alleged that the Note was due in installments, \$50,000 on October 1, 2003 and \$60,000 on January 1, 2004.

The Husband testified that he received a copy of the lawsuit (written in Hebrew) on January 12, 2004 via DHL. He further testified that his minor son hand delivered a copy of what he received to the Wife. The Wife denied under oath receiving this copy. Neither the Husband nor the Wife speak or read Hebrew.

On January 22, 2004, Marie I. LaBruyere, the Husband's domestic relations attorney, mailed a copy of the lawsuit translated into English to the Wife who faxed it to her domestic relations attorney. The translated version contained a page which contained the following language:

To be sure of the matter please contact, if you want, the Court of Reconciliation in Jerusalem. Telephone number 02-706411, file number in this Court is 11178/03 Civil file.

The "Summons to Summary Procedure" included in the translated suit papers did not indicate whether or when a response was due.

Neither the Wife nor the Husband filed a response. Consequently, a default judgment was entered in Jerusalem, Israel on February 25, 2004 and filed in this Court on June 8, 2004 as a foreign judgment.

II. DISCUSSION

Under the Uniform Foreign Money Judgments Recognition Act (hereinafter referred to as “the Act”), this Court shall recognize and afford full faith and credit to “any foreign judgment that is final and conclusive and enforceable where rendered....”¹ A foreign judgment is not conclusive if

- (1) The judgment was rendered under a system which does not provide for impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant; or
- (3) The foreign court did not have jurisdiction over the subject matter.²

A foreign judgment need not be recognized if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;
- (2) The judgment was obtained by fraud;
- (3) The cause of action on which the judgment is based is repugnant to the public policy of this State;
- (4) The judgment conflicts with another final and conclusive judgment;
- (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
- (6) In the case of jurisdiction based only on personal service, the foreign court was a not a seriously inconvenient forum.³

¹ Uniform Enforcement of Foreign Judgments Act, 10 *Del. C.* § 4801 *et. seq.*

² *Id.* at § 4804.

³ *Id.*

The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:

- (1) The defendant was served personally in the foreign state;
- (2) The defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;
- (3) The defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- (4) The defendant was domiciled in the foreign state when the proceedings were instituted or, being a body corporate, had its principal place of business, was incorporated or had otherwise acquired corporate status in the foreign state;
- (5) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or
- (6) The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.⁴

The first issue here is whether the “notice” received by the Wife comports with due process.⁵

After consideration of all the evidence, the Court finds the notice does not comport with due process. First, the initial documents were in Hebrew, not a language spoken or read by the Wife. Second, the English translated documents the Wife received by mail were not from a Court, but from the Husband’s private attorney. Third, the translated documents did not state whether the Husband and the Wife were obligated to respond, or by what date they were obligated to respond. The Court

⁴ *Id.* at § 4805.

⁵ If it does not, the foreign judgment is not conclusive and thus not enforceable under the Act.

agrees with the Wife that the statement, "To be sure of the matter please contact, *if you want*, the Court of reconciliation in Jerusalem," is not sufficient to put a defendant on notice that she must respond or face a default judgment.⁶ Given these circumstances, to require the Wife to defend a lawsuit in Israel, a seriously inconvenient forum, on a Note she was unaware of, and to which she was not a signatory, would violate her right to due process.⁷

The second issue before the Court is whether the notice given by the Husband's attorney, Ms. LaBruyere, of a translated copy of the Summons and Complaint, or if the Court believes the Husband, the copy of the Summons and Complaint in Hebrew hand-delivered by the couple's minor son, was sufficient to obtain personal jurisdiction over the Wife.⁸ As explained below, the Court finds that neither method was sufficient.

First and most important, the Plaintiff has failed to present any evidence establishing what methods of service are appropriate under Israeli law on a non-resident of Israel. Delaware law does not provide for service by mail or by a minor.⁹ Long arm service is permitted under Delaware law¹⁰, but the long arm statute applies to *non-resident* persons and corporations. In the case *sub judice*, the Wife is a Delaware resident. In short, the Plaintiff has not established that the foreign court had personal jurisdiction over the Wife.

⁶Exhibit A2 from June 21, 2005 hearing.

⁷ See 10 Del. C. § 4804 (b)(1) and (6).

⁸ See 10 Del. C. § 4804 (a)(2).

⁹ See Superior Court Civil Rule 4.

¹⁰ See 10 Del. C. § 3104.

The final issue is whether the judgment was obtained by fraud.¹¹ Based on the evidence presented, the Court has concerns that the judgment may have been obtained by fraud. First, it is not clear that either party was in Jerusalem when the Note was allegedly signed by the Husband on August 1, 1996. Second, there is some suggestion that the Plaintiff and the Husband have a familial or social relationship, raising the spectre of a less than arms length transaction. Third, if the Court believes the Husband's testimony that the Note was due in installments, the second installment of \$60,000 was not due until January 1, 2004, yet the Plaintiff filed suit on December 9, 2003 for the full amount of the Note. By its own terms, the Note was not due until the end of 2004. It is inconceivable that a foreign court would enter a judgment on a Note that was not fully in default under its own terms. Fourth, the named Obligee under the Note may not be the same person who filed suit and obtained the default judgment in Israel. Fifth, the only evidence that the identification number on the Note is the Husband's and Wife's number as a married couple is the Husband's testimony, which the Court does not find credible. Sixth, there is no proof, other than the Husband's testimony, that he could, as the Wife's husband, obligate her on the Note. The Wife testified convincingly that she knew nothing about the Note and would not have agreed to it because the couple had sufficient savings to fund their relocation to the United States. The Court finds wholly unbelievable the Husband's claim that he carried \$130,000 in cash in a bag to the United States undetected by and unbeknownst to airport security, customs officials, or any other person, including the Wife. Because this Court is not at all satisfied that the foreign judgment was not obtained by fraud, the Court finds the foreign judgment non-conclusive, and thus, unenforceable, under the Act.

Consequently, the Wife's Motion to Vacate Foreign Judgment is **GRANTED**.

¹¹ See 10 Del. C. § 4804 (b)(2).

IT IS SO ORDERED.

Jan R. Jurden, Judge